IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.275 OF 2001

Pandu Kunda Patil
now deceased through his LRs
Smt.Padmibai Pandurang Patil & ors. ... Appellants.
Versus.
Smt.Yeshubai Dattu Gharat & anr. ... Respondents.

Shri A.J.Joshi for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 13th January, 2005.

P.C.:

1. The Second Appeal is by the legal representatives of the original Defendant. It is not in dispute that there was a sale of the suit land in favour of Dattu (who is the maternal uncle of the original Defendant) under the provisions of section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948. The case of the Appellants is based on certain documents which are produced before the Appellate Court by way of additional evidence. The Appellants have relied upon the mutation entry No.624 effected in the year 1959, which shows that the name of the original Defendant Pandurang was mutated in cultivation column of the Revenue Record in respect of the suit land. The learned Counsel for the Appellants, therefore, submitted that it was deceased Pandurang who was in cultivation of the suit land on the tiller's day and the name of Dattu appeared as he was staying in the house of Pandurang and was taking care of

Pandurang. The learned Counsel, therefore, submitted that the Appellate Court committed an error by holding that Dattu was protected tenant in respect of the suit land.

2. It is an admitted position that the sale of the suit land has been effected under section 32G of the said Act of 1948 in favour of Dattu. The said order passed under section 32G is not challenged by the Appellant. So long as the said order is not set aside by adopting available remedies, the said order holds the field. Therefore, no fault can be found with the approach of the Courts below when on the basis of the said order under section 32G of the said Act of 1948 the claim of the original Plaintiff was accepted.

3. There is no substantial question of law arising in this Second Appeal and the Second Appeal is dismissed with no order as to costs.

Judge.